

ATTACHMENT #1

KINSHIP CARE STATUTORY LANGUAGE

Attachment #1 is the statutory language related to the Kinship Care Program. This language is found at s.48.57(3m) and (3p), Stats.

48.57 Powers and duties of county departments providing child welfare services.

(3m) (a) In this subsection:

1. "Department" means the department of industry, labor and job development.

2. "Kinship care relative" means a stepparent, brother, sister, stepbrother, stepsister, first cousin, nephew, niece, aunt, uncle or any person of a preceding generation as denoted by the prefix of grand, great or great-great, whether by consanguinity, direct affinity or legal adoption, or the spouse of any person named in this subdivision, even if the marriage is terminated by death or divorce.

NOTE: Par. (a) is repealed and recreated eff. 7-1-97 by 1995 Wis. Act 289 to read:

(a) In this subsection, "kinship care relative" means a stepparent, brother, sister, stepbrother, stepsister, first cousin, nephew, niece, aunt, uncle or any person of a preceding generation as denoted by the prefix of grand, great or great-great, whether by consanguinity, direct affinity or legal adoption, or the spouse of any person named in this paragraph, even if the marriage is terminated by death or divorce.

(am) From the appropriations under s. 20.445 (3) (d) and (p), the department shall make payments in the amount of \$215 per month to a kinship care relative who is providing care and maintenance for a child if all of the following conditions are met:

NOTE: Par. (am) (intro.) is repealed and recreated eff. 7-1-97 by 1995 Wis. Act 289 to read:

(am) From the appropriations under s. 20.435 (7) (b) and (o), the department shall reimburse counties for payments made under this subsection. A county department shall make payments in the amount of \$215 per month to a kinship care relative who is providing care and maintenance for a child if all of the following conditions are met:

1. The kinship care relative applies to the county department for payments under this subsection and the county department determines that there is a need for the child to be placed with the kinship care relative and that the placement with the kinship care relative is in the best interests of the child.

2. The county department determines that the child meets one or more of the criteria specified in s. 48.13 or 938.13 or that the child would be at risk of meeting one or more of those criteria if the child were to remain in his or her home.

4. The county department conducts a background investigation under sub. (3p) of the kinship care relative, the employee and prospective employees of the kinship care relative who have or would have regular contact with the child for whom the payments would be made and any other adult resident of the kinship care relative's home to determine if the kinship care relative or adult resident has any arrests or convictions that could adversely affect the child or the kinship care relative's ability to care for the child.

4m. Subject to sub. (3p) (fm), the kinship care relative states that he or she does not have any arrests or convictions that could adversely affect the child or the kinship care relative's ability to care for the child and that no adult resident, as defined in sub. (3p) (a), and no employee or prospective employee of the kinship care relative who would have regular contact with the child has any arrests or convictions that could adversely affect the child or the kinship care relative's ability to care for the child.

5. The kinship care relative cooperates with the county department in the application process, including applying for other forms of assistance for which the kinship care relative may be eligible.

(b) 1. The county department shall refer to the attorney responsible for support enforcement under s. 59.458 (1) [59.53 (6) (a)] the name of the parent or parents of a child for whom a payment is made under par. (am).

NOTE: The bracketed language indicates the correct cross-reference. Corrective legislation is pending.

2. When any kinship care relative of a child applies for or receives payments under this subsection, any right of the child or the child's parent to support or maintenance from any other person, including any right to unpaid amounts accrued at the time of application and any right to amounts accruing during the time that payments are made under this subsection, is assigned to the state. If a child who is the beneficiary of a payment under this subsection is also the beneficiary of support under a judgment or order that includes support for one or more children who are not the beneficiaries of payments under this subsection, any support payment made under the judgment or order is assigned to the state in the amount that is the proportionate share of the child who is the beneficiary of the payment made under this subsection, except as otherwise ordered by the court on the motion of a party.

(c) The county department shall require the parent or parents of a child for whom a payment is made under par. (am) to initiate or continue health care insurance coverage for the child.

(cm) A kinship care relative who receives a payment under par. (am) is not eligible to receive a payment under s. 48.62 (4).

(d) The county department shall review a placement of a child for which the department of industry, labor and job development makes payments under par. (am) not less than every 12 months after the department of industry, labor and job development begins making those payments to determine whether the conditions specified in par. (am) continue to exist. If those conditions do not continue to exist, the department shall discontinue making those payments.

NOTE: Par. (d) is repealed and recreated eff. 7-1-97 by 1995 Wis. Act 289 to read:

(d) A county department shall review a placement of a child for which the county department makes payments under par. (am) not less than every 12 months after the county department begins making those payments to determine whether the conditions specified in par. (am) continue to exist. If those conditions do not continue to exist, the county department shall discontinue making those payments.

(e) The department of health and family services, in consultation with the department of industry, labor and job development, shall determine whether the child is eligible for medical assistance under ss. 49.43 to 49.47.

NOTE: Par. (e) is repealed and recreated eff. 7-1-97 by 1995 Wis. Act 289 to read:

(e) The department shall determine whether the child is eligible for medical assistance under ss. 49.43 to 49.47.

(3p) (a) In this subsection, "adult resident" means a person 18 years of age or over who lives at the home of a person who has applied for or is receiving payments under sub. (3m) with the intent of making that home his or her home or who lives for more than 30 days cumulative in any 6-month period at the home of a person who has applied for or is receiving payments under sub. (3m).

(b) 1. After receipt of an application for payments under sub. (3m), the county department, with the assistance of the department of justice, shall conduct a background investigation of the applicant.

2. The county department, with the assistance of the department of justice, may conduct a background investigation of any person who is receiving payments under sub. (3m) at the time of review under sub. (3m) (d) or at any other time that the county department considers to be appropriate.

(c) 1. After receipt of an application for payments under sub. (3m), the county department, with the assistance of the department of justice, shall, in addition to the investigation under par. (b), conduct a background investigation of all employees and prospective employees of the applicant who have or would have regular contact with the child for whom those payments are being made and of each adult resident.

2. The county department, with the assistance of the department of justice, may conduct a background investigation of any of the employees or prospective employees of any person who is receiving payments under sub. (3m) who have or would have regular contact with the child for whom those payments are being

made and of each adult resident at the time of review under sub. (3m) (d) or at any other time that the county department considers to be appropriate.

3. Before a person that is receiving payments under sub. (3m) may employ any person in a position in which that person would have regular contact with the child for whom those payments are being made or permit any person to be an adult resident, the county department, with the assistance of the department of justice, shall conduct a background investigation of the prospective employee or prospective adult resident unless that person has already been investigated under subd. 1. or 2.

(d) If the person being investigated under par. (b) or (c) is a nonresident, or at any time within the 5 years preceding the date of the application has been a nonresident, or if the county department determines that the person's employment, licensing or state court records provide a reasonable basis for further investigation, the county department shall require the person to be photographed and fingerprinted on 2 fingerprint cards, each bearing a complete set of the person's fingerprints. The department of justice may provide for the submission of the fingerprint cards to the federal bureau of investigation for the purposes of verifying the identity of the person fingerprinted and obtaining records of his or her criminal arrest and conviction.

(e) Upon request, a person being investigated under par. (b) or (c) shall provide the county department with all of the following information:

1. The person's name.
2. The person's social security number.
3. Other identifying information, including the person's birthdate, gender, race and any identifying physical characteristics.
4. Information regarding the conviction record of the person under the law of this state or any other state or under federal law. This information shall be provided on a notarized background verification form that the department shall provide by rule.

(fm) 1. The county department may provisionally approve the making of payments under sub. (3m) based on the applicant's statement under sub. (3m) (am) 4m. The county department may not finally approve the making of payments under sub. (3m) unless that county department receives information from the department of justice indicating that the conviction record of the applicant under the law of this state is satisfactory according to the criteria specified in par. (g) 1. to 3. The department of industry, labor and job development may make payments under sub. (3m) conditioned on the receipt of information from the federal bureau of investigation indicating that the person's conviction record under the law of any other state or under federal law is satisfactory according to the criteria specified in par. (g) 1. to 3.

2. A person receiving payments under sub. (3m) may provisionally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or provisionally permit a person to be an adult resident if the person receiving those payments states to the county department that the employee or adult resident does not have any arrests or convictions that could adversely affect the child or the ability of the person receiving payments to care for the child. A person receiving payments under sub. (3m) may not finally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or finally permit a person to be an adult resident until the county department receives information from the department of justice indicating that the person's conviction record under the law of this state is satisfactory according to the criteria specified in par. (g) 1. to 3. and the county department so advises the department and the person receiving payments under sub. (3m). A person receiving payments under sub. (3m) may finally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or finally permit a person to be an adult resident conditioned on the receipt of information

from the county department that the federal bureau of investigation indicates that the person's conviction record under the law of any other state or under federal law is satisfactory according to the criteria specified in par. (g) 1. to 3.

(g) The department may not make payments to a person applying for payments under sub. (3m) and a person receiving payments under sub. (3m) may not employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or permit a person to be an adult resident if any of the following applies:

NOTE: Par. (g) (intro.) is amended eff. 7-1-97 by 1995 Wis. Act 289, s. 71f, to read as shown below. The bracketed language was deleted from the creation of this provision by the governor's partial veto of 1995 Wis. Act 289, s. 71d. Section 71f shows the bracketed language as if it had been enacted by s. 71d.

(g) [Subject to par. (h),] the county department may not make payments to a person applying for payments under sub. (3m) and a person receiving payments under sub. (3m) may not employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or permit a person to be an adult resident if any of the following applies:

1. The person has been convicted of a violation of ch. 161 that is punishable as a felony or of a violation of the law of any other state or federal law that would be a violation of ch. 161 that is punishable as a felony if committed in this state.

2. The person has had imposed on him or her a penalty specified in s. 939.62, 939.621, 939.63, 939.64, 939.641 or 939.645 or has been convicted of a violation of the law of any other state or federal law under circumstances under which the applicant or other person would be subject to a penalty specified in any of those sections if convicted in this state.

3. The person has been convicted of a violation of ch. 940, 944 or 948, other than a violation of s. 940.291, 940.34, 944.36, 948.45, 948.63 or 948.70, or of a violation of the law of any other state or federal law that would be a violation of ch. 940, 944 or 948, other than a violation of s. 940.291, 940.34, 944.36, 948.45, 948.63 or 948.70, if committed in this state, except that the department may make payments to a person applying for payments under sub. (3m) and a person receiving payments under sub. (3m) may employ in a position in which the person would have regular contact with the child for whom those payments are being made or permit to be an adult resident a person who has been convicted of a violation of s. 944.30, 944.31 or 944.33 or of a violation of the law of any other state or federal law that would be a violation of s. 944.30, 944.31 or 944.33 if committed in this state, if that violation occurred 20 years or more before the date of the investigation.

(i) The county department shall keep confidential all information received under this subsection from the department of justice or the federal bureau of investigation. Such information is not subject to inspection or copying under s. 19.35.

(j) The county department may charge a fee for conducting a background investigation under this subsection. The fee may not exceed the reasonable cost of conducting the investigation.

(3t) Notwithstanding subs. (3m) and (3p), the department may enter into an agreement with the governing body of a federally recognized American Indian tribe to allow that governing body to administer the program under subs. (3m) and (3p) within the boundaries of that reservation.

History: 1977 c. 29; 1977 c. 83 s. 26; 1977 c. 271, 354, 418, 447, 449; 1979 c. 34, 221; 1981 c. 329; 1983 a. 189 s. 329 (17); 1983 a. 447; 1985 a. 176; 1987 a. 339; 1993 a. 385, 395, 446, 491; 1995 a. 27 ss. 2575 to 2579m, 9126 (19), 1995 a. 77, 289, 443.

This section does not authorize the department to place children in a detention home temporarily while permanent placement is sought. *State ex rel. Harris v. Larson*, 64 W (2d) 521, 219 NW (2d) 335.

County agencies providing child welfare services do not have authority under (1) or 48.52 to lease real property for foster home use. 65 Any. Gen. 93.